



OFFICE of the ATTORNEY GENERAL
GREG ABBOTT

December 20, 2002

Mr. Brad Norton
Assistant City Attorney
City of Austin - Law Department
P. O. Box 1088
Austin, Texas 78767-8845

OR2002-7325

Dear Mr. Norton:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 174177.

The City of Austin (the "city") received a written request for, among other things, any current contracts for cell telephone use.¹ You do not contend that the requested contract is excepted from public disclosure, but rather you have requested a decision from this office pursuant to section 552.305 of the Government Code, which allows governmental bodies to rely on third parties having a privacy or property interest in the information to submit their own arguments as to why the requested information should be withheld from the public.

We note at the outset that you have informed us that the interested third party, AT&T Corporation, had previously deemed portions of the requested contract as proprietary. However, information is not confidential under the Public Information Act merely because the party submitting the information anticipates or requests that it be kept confidential. *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 677 (Tex. 1976), *cert. denied* 430 U.S. 931 (1977). In other words, a governmental body cannot, through an agreement, overrule or repeal provisions of the Public Information Act. Attorney General Opinion JM-672 (1987); *but see* Open Records Decision No. 284 (1981) (letters of recommendation submitted pursuant to express contracts of confidentiality prior to 1973, when Open Records Act was enacted, are enforceable). Consequently, unless the requested information falls within an exception to disclosure, it must be released, notwithstanding any agreement specifying otherwise.

We next note that the requested contracts are subject to section 552.022 of the Government Code. Section 552.022 provides in pertinent part:

¹You state that the other requested information "has been or will be released" to the requestor.

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

....

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body[.]

Gov't Code § 552.022(a)(3). Consequently, the city must release the executed contracts except to the extent they are made confidential under other law. Although you do not contend that any portion of the contracts is made confidential under other law, we note that in accordance with section 552.305(d), the city notified AT&T Corporation of the records request and of their right to submit arguments to this office as to why portions of the contract should not be released to the public. *See* Gov't Code § 552.305(d); Open Records Decision No. 542 (1990) (determining that statutory predecessor to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under Public Information Act in certain circumstances). An interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See* Gov't Code § 552.305(d)(2)(B).

This office did not receive a response from AT&T Corporation indicating that they wished to have any portion of the requested contract withheld from the public. This office therefore has no basis for concluding that this company has a privacy or property interest in this information. Consequently, the city must release the requested contract in its entirety, with the following exception.

We note that some of the materials you submitted to this office as being responsive to the records request contain certain e-mail addresses that the city is required to withhold from the public. Section 552.137 of the Government Code makes certain e-mail addresses confidential and provides in relevant part:

(a) An e-mail address *of a member of the public* that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under this chapter.

(b) Confidential information described by this section that relates to a member of the public may be disclosed if the member of the public affirmatively consents to its release. [Emphasis added.]

Some of the documents at issue contain private e-mail addresses. Accordingly, section 552.137 of the Government Code requires the city to withhold the e-mail addresses that we have marked unless the city receives an affirmative consent to release from the person to whom the e-mail address belongs. We note that section 552.137 does not apply to a business' general e-mail or web page address.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, reading "Jennifer E. Berry". The signature is fluid and cursive, with the first letters of each word being capitalized and prominent.

Jennifer E. Berry
Assistant Attorney General
Open Records Division

JEB/RWP/lmt

Ref: ID# 174177

Enc: Submitted documents

c: Ms. Nanci Wilson
10700 Metric Blvd.
Austin, Texas 78758
(w/o enclosures)